IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.2 of 1995 alongwith connected RFAs No. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 27, 34, 40, 61, 65, 72, 74, 75, 76, 77, 80, 82, 83, 84, 85, 87, 88, 90, 91, 92, 93, 103 & 135 of 1995

Judgment Reserved on : April 19, 2007.

Decided on : 25.4.2007

RFA No.2/1995

Phool Singh ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.3/1995

Roshan ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.4/1995

Matu ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.5/1995

Nathu ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.6/1995

Mukhtiara ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.7/1995

Hans Raj and others ....Appellants.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.8/1995

Matu Ram ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.9/1995

Krishan Lal ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.10/1995

Shankar Lal ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.11/1995

Mohindroo and another ....Appellants.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.12/1995

Rasal ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.13/1995

Jai Kishore
(through LRs Upender Bansal & others) ....Appellants.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.14/1995

Ram Kishore Bansal
(Through LRs Shela Bansal & others) ....Appellants.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.15/1995

Rajeev Bansal & others ....Appellants.

VERSUS

State of H.P. and others ....Respondents.

RFA No.23/1995

Punnu Ram ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.24/1995

Santosh Bansal & others ....Appellants.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.25/1995

Kamla ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.27/1995

Labh Singh & others ....Appellants.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.34/1995

Krishni ....Appellant.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.40/1995

Nazir Din & others ....Appellants.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.61/1995

Ramesh Kishore Bansal & others ....Appellants.

VERSUS

Land Acquisition Collector and another ....Respondents.

RFA No.65/1995

Land Acquisition Officer and another ....Appellants.

VERSUS

Rasal ....Respondent.

RFA No.72/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Parkash Chand Bansal ....Respondent.

RFA No.74/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Nazir Din & another ....Respondents.

RFA No.75/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Matu Ram ....Respondent.

RFA No.76/1995

Land Acquisition Officer and another ....Appellants.

VERSUS

Roshan ....Respondent.

RFA No.77/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Punnu Ram ....Respondent.

RFA No.80/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Ram Kishore Bansal
(Through LRs Sheela Bansal & others) ....Respondents.

RFA No.82/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Nathu Ram ....Respondent.

RFA No.83/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Labh Singh and others ....Respondents.

RFA No.84/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Jai Kishore
(Through LRs Upender Kunar Bansal & others) ....Respondents.

RFA No.85/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Mukhtiara ....Respondent.

RFA No.87/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Hans Raj and another ....Respondents.

RFA No.88/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Matu Ram ....Respondent.

RFA No.90/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Phool Singh ....Respondent.

RFA No.91/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Shankar Lal
(Through LRs Bachana Ram & others ....Respondents.

RFA No.92/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Ramesh Kishore Bansal ....Respondent.

RFA No.93/1995

Land Acquisition Collector and another ....Appellants.

VERSUS

Mohindroo & another ....Respondents.

RFA No.103/1995

Land Acquisition Collector and another **....Appellants.**

VERSUS

Rajeev Bansal and others **....Respondents.**

RFA No.135/1995

Land Acquisition Collector and another **....Appellants.**

VERSUS

Krishan Lal **....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant(s) : Mr. K.D. Sood, Ms Devyani Sharma, Mr. Anil Kumar vice Mr. Sandeep Kaushik & Mr. Bimal Gupta, Advocates, in RFAs No.2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 27, 34, 40 & 61 of 1995.

Mr. M.S. Chandel, Advocate General, with Mr. Ashok Chaudhary, Additional Advocate General, in RFAs No.65, 72, 74, 75, 76, 77, 80, 82, 83, 84, 85, 87, 88, 90, 91, 92, 93, 103 & 135 of 1995.

For the respondents : Mr. M.S. Chandel, Advocate General, with Mr. Ashok Chaudhary, Additional Advocate General, in RFAs No. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 27, 34, 40 & 61 of 1995.

Mr. K.D. Sood, Ms Devyani Sharma, Mr. Anil Kumar vice Mr. Sandeep Kaushik & Mr. Bimal Gupta, Advocates, in RFAs No. 65, 72, 74, 75, 76, 77, 80, 82, 83, 84, 85, 87, 88, 90, 91, 92, 93, 103 & 135 of 1995.

Surjit Singh, Judge

All the appeals, particulars whereof are given in the title of this judgment, arise out of the same award, i.e. award dated 27.10.1994, under Section 18 of the Land Acquisition Act, hereinafter

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Whether the reporters of the local papers may be allowed to see the Judgment?

referred to as the Act, passed by the Additional District Judge, Sirmour; therefore, the same are being disposed of by a common judgment.

2. One set of appeals has been filed by the Reference Petitioners, as they are not satisfied with the market value of the acquired land assessed by the learned Additional District Judge. The other set has been filed by the Land Acquisition Collector, who is dissatisfied with the award with regard to the enhancement of compensation in respect of *Banjar Kadim* and *Nakabil* classes of land.

3. Facts relevant for the disposal of the appeals may be noticed. The Government of Himachal Pradesh issued a Notification, under Section 4 of the Act, which was published in the Rajpatra on 2.4.1988. The Notification was amended lateron several times. As per amended version of the Notification, 211 *Bighas* land situated in village Johron and Rampur Jattan of Tehsil Nahan in District Sirmour was sought to be acquired for a public purpose, i.e. setting up of industries. Out of the notified land, 4 bighas 4 biswas land was *Obar Abal;* 23 bighas 6 biswas *Obar* Doem; 177 bighas 7 biswas *Banjar* Kadim; and 6 bighas 6 biswas *Nakabil* kind of land. Thereafter, process was started for the acquisition of the land. Land Acquisition Collector, after issuing requisite notices to the land owners and other interest holders and making inquiry, determined the market value of the land as follows:

(a)	*Obar Abbal*	Rs.35,814.92
(b)	*Obar Doem*	Rs.27,150.02
(c)	*Banjar Kadim*	Rs. 6,931.92

(d) *Nakabil* Rs. 500.00

There also stood some trees on the acquired land, compensation for which was assessed separately.

4. Owners/interest holders were dissatisfied with the quantum of compensation assessed by the Land Acquisition Collector. Therefore, they required the Land Acquisition Collector to make references, under Section 18 of the Act to the District Judge. Accordingly, references were made.

5. Owners/interest holders, in their reference petitions, stated that the acquired land was situated between Kala Amb and Trilokpur, which was fast developing into industrial area and, thus, it had great potential for setting up of industrial units. It was alleged that the market value of the acquired land was not less than Rs.1 lac per *Bigha* and the entire land, irrespective of kind, had the same value, as the whole of it had the potential for setting up of industrial units. Valuation of trees was also alleged to be on the lower side.

6. Land Acquisition Collector filed reply, in which it was stated that the valuation was done as per rates of the land prevailing in the area.

7. Learned Additional District Judge, after recording the evidence of both the sides, concluded that the compensation for *Obar Abal* and *Obar Doem* kinds of land, as assessed by the Land Acquisition Collector, was correct and called for no enhancement. As regards, the land of *Banjar Kadim* and *Nakabil* classes, it was held that the market value of *Banjar Kadim* was Rs.12,000/- per *Bigha* and *Nakabil* type of land was Rs.6,000/- per *Bigha* and compensation for

these two classes of land was enhanced accordingly. The Land Acquisition Collector was required to pay the enhanced compensation with compulsory acquisition charges, under Section 23(1-A) of the Act and interest @ 9% per annum for the first year and @ 15% per annum for the remaining period from the date of the award.

8. Grievance of the owners/interest holders is that the learned Additional District Judge has not assessed the market value of the acquired land correctly. According to them, market value of the acquired land was not less than Rs.1 lac per *Bigha*, irrespective of its class, because the entire land had the same potential, viz. the setting up of industry, as it is surrounded by various industries, which existed even before the issuance of the Notification, under Section 4 of the Act.

9. Land Acquisition Collector is aggrieved by the enhancement in compensation awarded by the Additional District Judge, in respect of *Banjar Kadim* and *Nakabil* kinds of land.

10. I have heard the learned counsel for the parties and perused the evidence.

11. It has come in the evidence that even before the issuance of Notification, under Section 4 of the Act, a number of industries had been set up in the close vicinity of the acquired land all along Kala Amb-Trilokpur Road. Some chunks of the acquired land also abut the aforesaid Kala Amb-Trilokpur Road. Other portions of the acquired land are not very far off from the road.

12. PW-1 Phool Singh, one of the claimants, testified that the acquired land had a number of industries on three sides of it. He also stated that a part of the acquired land abuts the Kala Amb-Trilokpur

Road. PW-2 Hans Raj, another landowner, also made a similar statement. PW-4 Kamal Kishore, Patwari of Halqua Trilokpur, proved on record a tatima Ex. PW-4/A and the copies of Jamabandis Exs. PW4.B and PW-4/C, pertaining to village Johron**.** The tatima and the jamabandis show that there are industries in the close vicinity of the acquired land. The witness stated that the industries have been set up along the Kala Amb-Trilokpur Road and that some of the industrial units are even beyond the acquired land towards Trilokpur. PW-5 Ishwar Chand, another Patwari, stated that the industries around the acquired land had been set up, before the acquisition took place. He proved *Aks Shajra* Ex. PW-5/A, pertaining to village Rampur Jattan, and the copy of the Jamabandi Ex. PW-5/B, in respect of the same village. The *Aks Shajra* and the Jamabandi prove that already there were atleast two factories in village Rampur Jattan and those were situated close to the acquired land. Land Acquisition Collector examined three witnesses. These witnesses though stated that the acquired land did not have any potential for establishment of factories prior to acquisition, yet they could not categorically deny the suggestions thrown to them in the cross-examination that the acquired land had a number of industries around it before the start of the acquisition process. They simply expressed ignorance, inspite of their claim that they had visited the acquired land. One of these witnesses, namely RW-1, stated that he had visited the area 50-60 times. RW-3 Kamal Kishore**,** Patwari, examined by the Land Acquisition Collector admitted in his cross-examination that a number of factories had been set up beyond the acquired land even prior to the start of the process for the acquisition of the land, in question.

13. The above discussed evidence conclusively proves that the acquired land was situated in the midst of a number of industries, when the notification for its acquisition was issued. RW-3 Kamal Kishore, Patwari, examined by the Land Acquisition Collector itself, stated that some industries had been set up even beyond the acquired land towards Trilokpur. The witness also stated that some of the acquired land abutted on the aforesaid road. That means the acquired land had very good potential for setting up industries. Now, if the land had the potential for setting up industries, the whole of it, irrespective of the kind or class of the land, can legitimately be presumed to have the same market value.

14. Petitioners relied upon six transactions to prove the market value of the land. Out of these six transactions, only three can be stated to be relevant, as they had taken place approximately within one year of the issuance of the Notification, in question. One transaction is dated 30.1.1987. Copy of the sale deed is proved on record. Through this transaction 10 *biswas* land, situate in Village Johron, was sold for Rs.16,000/-. The class of the land is *Gair Mumkin Khala* (*Khala* in that area is the name for *Nullah*). The other transaction is dated 5.10.1988. As per copy of the sale deed proved on record 10 *biswas* land was sold for Rs.30,000/-. The land was *Chahi* (irrigated). The third transaction is evidenced by sale deed dated 27.8.1987. The subject matter of this transaction was 13 *biswas Chahi* Land. It fetched a price of Rs.46,000/-. Two of these transactions had taken place in the year 1987. One of these two pertaining to 10 *biswas* of *Gair Mumkin Khala* land took place in

January, 1987. The notification for acquisition of the land, in question, was issued in April, 1988. Therefore, an increase at the rate of atleast 10 per cent is required to be given to work out the market value of the land, in 1988, when the notification was issued. This way the market value of the land sold through the sale deed dated 30.1.1987 comes to Rs.35,000/- per *Bigha*, approximately. The other transaction of the year 1987 had taken place in August, 1987, or say about eight months prior to the issuance of the notification, under Section 4 of the Act. The land that was the subject matter of this transaction was sold at the rate of Rs.70,000/- per *Bigha*. Increase is required to be made atleast @ 7% to work out the market value of this land in April, 1988. By such increase the value comes to Rs.75,000/- per *Bigha*, approximately. The third transaction has taken place in the year 1988. The average market value, according to these three transactions, comes to Rs.63,000/- per *Bigha*.

15. This is the market price in respect of small pieces of land measuring 10 to 13 *biswas.* For working out the market value of a large area, a cut @ 40% is required to be made, on account of development charges and utilization of a part of the land for roads, drains and other civic amenities. Thus, the market value of the acquired land works out at Rs.37,800/- per *Bigha.*

16. There is absolutely no evidence with respect to the allegation that the compensation assessed for the trees standing on the acquired land is inadequate. So, the landowners/interest holders are not entitled to any increase in the compensation assessed and

paid by the Land Acquisition Collector for the trees standing on the acquired land.

17. As a sequel to the above discussion and findings, appeals filed by the landowners/interest holders, i.e. RFAs No.2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 27, 34, 40 & 61 of 1995 are accepted and it is ordered that the petitioners be paid compensation for their acquired land at the uniform rate of Rs.37,800/- per *Bigha*, together with compulsory acquisition charges, increase under Section 23(1-A) of the Act and interest at the statutory rates, i.e. 9% per annum for the first year and @ 15% for the remaining period from the date of the award of the Land Acquisition Collector. It is further ordered that the difference between the amounts of compensation already paid and the amount of compensation to which they have been held entitled hereinabove be worked out and paid to them within two months. Appeals filed by the Land Acquisition Collector, i.e. RFAs No.65, 72, 74, 75, 76, 77, 80, 82, 83, 84, 85, 87, 88, 90, 91, 92, 93, 103 & 135 of 1995 are dismissed.

April 25, 2007(sd) **(Surjit Singh), J.**